IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 31 of 2001
in
COMPANY PETITION No 161 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT PANCHAL
Versus
KARNAVATI ENGINEERING LTD.

Appearance:
1. O.J.APPEAL No. 31 of 2001
MR MIHIR H JOSHI for Petitioner No. 1
MS KJ BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 03/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Shri Bharat Panchal, Sole Proprietor of M/s.Metal

Kraft Engineering, appellant - original petitioner has filed this appeal under the provisions of Section 483 of the Companies Act, against the judgment and order dated 13.3.2001 passed by this Court. The learned Single Judge of this Court was pleased to dismiss the petition only on the ground that there was a dispute regarding the interest amount and, therefore, the Court is not required to entertain this petition before this Court and remedy open to the company would be by filing a suit.

2. The facts giving rise to this appeal are as under:-

2.1 The petitioner has originally filed a winding up petition before this Court against M/s.Karnavati Engineering Ltd. (hereinafter referred to as `the Company'). In the petition it was contended that the petitioner is carrying the business of fabrication work with it for the purpose of use in plant and machinery for supply inter alia to pharmaceutical industries. The petitioner regularly supplied the fabricated equipment and material to the respondent company as per its orders and on assurance to make payment thereof.

2.2 On 12.1.1998 the petitioner forwarded detailed account to the respondent company seeking balance confirmation of the outstanding dues of Rs.9,59,879.50 (Rupees Nine Lakhs Fifty Nine Thousand Eight Hundred Seventy Nine and Fifty paise only) as on that date. The respondent company endorsed the account and confirmed an amount of Rs.8,99,787.50 (Rupees Eight Lakhs Ninety Nine Thousand Seven Hundred Eighty Seven and Fifty paise only) as outstanding payable as on 30.11.1997 to the petitioner. According to them some bills were lying with the purchase department.

2.2(A) Thereafter correspondence ensue between petitioner and the respondent company and ultimately the petitioner addressed a statutory notice on 13.5.1998 under Section 434 of the Companies Act, 1956, calling upon the respondent company to pay the outstanding amount of Rs.10,25,584.07 within 21 days from the receipt of the notice. The respondent thereafter replied the said notice and raised certain dispute. Ultimately the petitioner had filed a winding up petition before this Court claiming Rs.10,03,319.70 from the respondent company and also prayed that the respondent company be wound up by this Court under the provisions of the Companies Act.

2.3 During the pendency of the petition, it appears

that an interim order was passed by this Court on 24.6.99 directing the company to deposit Rs.1,00,000/- before this Court which they have deposited before this Court. Thereafter this Court also passed another order on 23.11.99 in which the company was directed to pay Rs.2,00,000/- on or before 15.12.1999, Rs.2,00,000/- on or before 15.01.2000 and Rs.2,52,964/- on or before 15.02.2000. The amount of Rs.1,00,000/- was allowed to be withdrawn by the petitioner in this behalf.

2.4 From the record it appears that the aforesaid amount has been deposited by the petitioner and petitioner has already withdrawn the same in this behalf. Thereafter the matter was heard before this Court pointing out all these aspects and ultimately in the last para 11 the Court has observed as under:

> "para 11. In the present case it is admitted position that after the order of this Court dated 23.11.1999, a sum of Rs.6,52,964.00 is paid and prior thereto an amount of Rs.1 lakh is also paid pursuant to the order of this Court dated 29.6.1999. From the record it is clear that there is a dispute regarding interest amount and in view of that this Court is of the opinion that this petition is not required to be entertained by this Court. Remedy open to the company would be by filing a suit."

2.5 As stated above, being aggrieved and dissatisfied with the said order the petitioner has filed appeal before this Court. The matter reached hearing before us. The learned counsel for the petitioner and his representative Mr.Bharat Panchal who is present before the Court and as far as respondent is concerned, learned advocate Ms.Kalpana J.Brahmbhatt and Mr.Mehul Rathod, Deputy Manager, Legal of the respondent company is also present.

3. The matter was placed for hearing before this Court. It was submitted that in view of the narrow dispute raised in the appeal, if the matter may be amicably settled the same will meets the ends of justice and that is how both the parties have agreed that they do not want to invite the decision on the merits of the matter.

4. It is an admitted fact that there was a dispute regarding payment of interest on the amount. However the only difference and dispute between the parties is that what rate of interest to be paid by the respondent

company to the petitioner in this behalf. Ultimately both the learned counsel alongwith their respective parties have agreed that whatever rate of interest the Court will determine the same is binding to both of them.

5. We have given our anxious consideration in this matter, and looking to the facts and circumstances of the case, we are of the view that if respondent is directed to pay 11 per cent interest on the principle amount of Rs.7,53,000/- from the date of the statutory notice dated 13.5.1998 till the payment is received. In view of the same we direct the respondent company to pay the interest as under:

Total Interest	Amount (Rs.)
(i) From 15.5.98 to 30.6.99 interest on Rs.7,53,000/- (13.5 months)	Rs.93,183.75
(ii) From 1.7.99 to 15.12.99 interest on Rs.6,53,000/- (5.5 months)	Rs.32,922.08
(iii) From 16.12.99 to 15.1.2000 interest on Rs.4,53,000/- (1 month)	Rs. 4,152.50
(iv) From 16.1.2000 to 15.2.2000 interest on Rs.2,53,000/- (1 month)	Rs. 2,319.17
Total	Rs.1,32,577.50

6. It may be stated that the respondent company has agreed and therefore we direct the respondent company to pay the aforesaid amount to the petitioner within two months from the date of the order. We further direct the authorised officer of the respondent company to file an undertaking within 15 days from today that they will pay the aforesaid amount within two months from today and the copy of the undertaking be given the learned advocate for the petitioner.

7. In view of the aforesaid observation and direction, the order of the learned Single Judge is modified accordingly to the aforesaid extent and the appeal is disposed of with no order as to costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)

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